

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 582 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- 4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?
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STATE OF GUJARAT - Applicant(s)

Versus

NILAYKUMAR GANGARAM PARMAR & 1 - Respondent(s)

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Appearance :

MR. H.M.PRACHHAK, APP for Applicant(s) : 1,
MR. U.A.TRIVEDI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 29/09/2005

ORAL JUDGMENT

1.Instant Criminal Revision Application filed by the applicant-State of Gujarat, under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short) is directed against the judgement and

order dated 20.6.2003 rendered in Criminal Appeal no. 2 of 2002 by the In Charge Joint District Judge, Fast Track Court, Ahmedabad Rural, Gandhinagar, by which the appeal filed by the respondent no.1/original accused no.1 came to be allowed and thereby judgement and order dated 5.2.2005 rendered in Criminal Case no. 4726 of 1996 by the learned JMFC, Second Court, Gandhinagar, convicting and sentencing respondent no.1/original accused no.1 for commission of the offence under Sections 323 and 498A of IPC, has been quashed and set aside and he has been acquitted of the offence with which he was charged.

2.As per the prosecution case respondent no.2 herein- Deepika Madhukarbhai Parmar married with respondent no.1-Nilaykumar Gangaram Parmar. She was residing at Plot No.69/2, Gandhinagar with her husband, mother-in-law and children and she was doing the household work. Her marriage took place six years prior to the incident at village Sardhav, as per their custom. Her husband is working as a Civil Engineer with the Narmada Nigam. After her marriage she was staying with her husband at village Sardhav and for the last five months, she was staying at Gandhinagar. According to the prosecution case, in the beginning, she was treated nicely in her matrimonial house. After the birth of first female child, her father gave cloths, gold, silver in all valued at Rs.1,00,000/- as Kariyavar (gift being given after the birth of first child by the father to his daughter). However, her father told the respondent/original accused that the gifts are given to his daughter for the purpose of wearing and not for selling. Thereupon the respondent and his mother started harassing her on trifling matters and also used

to beat her. However, in order to keep harmony she did not complaint about the same and was tolerating the same silently. However, they continued to harass her mentally and physically even at Gandhinagar. As per the prosecution case, all the ornaments given to her were disposed of by her husband and in-laws. She was not allowed to go to her parental house. On 27.6.1996 the mother-in-law instigated her husband and on her instigation, he gave fist and kick blows to her and thereafter, she was driven away from her matrimonial house. Her brother-in-law and mother-in-law abused her and instigated her husband to drive her out. However, as it was night time, she requested her husband to allow her to pass the night there. On the next day morning she was asked to leave the house. She was also threatened that she would be killed if she disclose the incident to anybody else. According to the prosecution case the neighbour-Parekhben came to her rescue on hearing her shouts, however, the husband and her mother gave fist and kick blows, thereby caused injuries on the right side of her neck. For the aforesaid incident, a complaint came to be lodged at Gandhinagar Section 7, Police Station which is registered vide CR No. I-126/1996 against respondent no.1-husband, his brother and mother for commission of the alleged offence under Sections 323, 504, 506(2), 498a and 114 of IPC.

3.After registration of complaint, investigation was put into motion. During the course of investigation, evidence was divulged against the accused mentioned in the FIR and accordingly they came to be cargesheeted in the Court of learned JMFC, Second Court, Gandhinagar, where it was numbered as Criminal Case No. 4726/1996.

The learned JMFC framed the charge against the accused persons to which they pleaded not guilty therefore they were put on trial. During the course of trial, prosecution examined in all five witnesses to bring home the charges leveled against the accused and also relied upon the original complaint.

4.The leaned JMFC, Gandhinagar, on appreciation and evaluation of the evidence recorded the finding of acquittal against the original accused nos. 2 and 3 who were the brother-in-law and the mother-in-law wheres he recorded the finding of guilty against respondent no.1-husband and accordingly he was convicted of the offence punishable under Sections 323 and 498A of the IPC and sentenced to suffer imprisonment for a period of three months and fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of 15 days for commission of the offence punishable under Section 323 of IPC, and ordered to suffer simple imprisonment for a period of 2 years and payment of fine of Rs.5000/- and in default of payment of fine further simple imprisonment for a period of 2 months for commission of the offence punishable under Section 498 of IPC.

5.Aggrieved thereby respondent no.1-husband filed Criminal Appeal No. 2 of 2002 in the Court of learned Sessions Judge, Ahmedabad Rural, which came to be heard by Fast Track Curt, Ahmedabad Rural at Gandhinagar. On reappreciation and reevaluation of the evidence he came to he conclusion that the prosecution failed to prove the charge leveled against respondent no.1 for the alleged offences, he therefore recorded the finding of not guilty and accordingly he passed he order acquitting respondent no.1-husband of the offence with

which he was charged, which has given rise to the present Criminal Revision Application at the instant of the Petitioner-State of Gujarat.

6. At the time of hearing of this application, Mr. U.A. Trivedi, learned advocate for opponent no.1 states that after the order passed by the learned Fast Track Court, Ahmedabad (Rural) at Gandhinagar in appeal registered as Criminal appeal No. 2 of 2002, opponent no.1-husband and opponent no.2-wife have entered into compromise and by virtue of the said compromise they have decided to put an end their matrimonial life. Both of them have filed HMP No. 94 of 2004 in the Court of learned Civil Judge (SD), Gandhinagar under Section 13B of the Hindu Marriage Act ('the Act' for short) for taking divorce by mutual consent. In the said proceedings, the learned Civil Judge (SD), Gandhinagar granted the consent decree in favour of both of them vide order dated 31.10.2004. He further states that both the parties have entered into compromise purshis dated 6.12.2004, duly signed by both of them as well as brother of Deepikaben/original complainant. While taking the consent decree as well as in compromise purshis respondent no.2-Deepikaben has agreed to settle the complaint and other proceedings which were initiated by her. Therefore, according to Mr. Trivedi, learned advocate of opponent no.1, matter has been amicably settled between the parties. This Criminal Revision Application now would not survive. He, therefore urged to dismiss the revision application.

7. Mr. H.M. prachhak, leaned APP of the applicant-State of Gujarat also contended that since the matter has been amicably settled between the parties, in the welfare of husband and wife, appropriate orders may be passed.

- 8.This Court has considered the submissions advanced by the learned advocates appearing for the parties, as well as the statement made by Mr. Trivedi, learned advocate for opponent no.1-husband and the impugned judgement and order; one passed by the learned JMFC, Gandhinagar and the second passed by the Second Fast Track Court, Gandhinagar and also the certified xerox copies of the consent decree recorded in HMP No. 94/1996 by the learned Civil Judge (SD), Gandhinagar as well as compromise purshis signed by both the respondents.
- 9.So far as the factual matrix is concerned, there is no dispute that the marriage of opponent no.2-original complainant was solemnised with opponent no.1 and thereafter she started residing with her in-law. A complaint came to be filed by the wife for alleged cruelty and beating meted out to her by the members of her in-laws including her husband. The said complaint came to be registered with the concerned police station vide CR No. 124/2004 and thereafter during the course of investigation since the evidence was divulged against the accused persons, they were charge sheeted. They were therefore put on trial. At the conclusion of the trial, the learned JMFC acquitted the brother and the mother of the husband whereas convicted opponent no.1-husband, therefore, husband filed Criminal Appeal before the learned Sessions Judge, at Gandhinagar. The learned Additional Sessions Judge, Fast Track Court, Gandhinagar acquitted the husband.
- 10.During all these proceedings, the talk of settlement was going on and by virtue of the settlement, HMP No. 94 of 2004 was preferred by the original complainant and her husband for obtaining decree of divorce by

mutual consent envisaged under Section 13B of the Act. In the said petition, complainant has agreed to withdraw the complaint as well as other proceedings initiated by her against her husband. The learned Civil Judge (SD), Gandhinagar passed decree vide order dated 31.10.2004. Thereafter also both the parties entered into compromise which is duly signed by both of them. By virtue of the settlement, original complainant has agreed to withdraw the complaint.

11. So far as the offence under Section 323 of IPC is concerned, it is compoundable, whereas the offence under Section 498A is not compoundable. In authoritative pronouncement made by the Supreme Court in the case of B.S.Joshi and others v/s. State of Haryana and another, 2003 (2) GLH, 351, it has been held that, *Section 498A of the IPC was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Hypertechnical view would be counter productive and would act against interest of woman, therefore non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. Prayer to quash proceedings cannot be declined on ground that offence is non-compoundable under Section 320 of the Code. It is further held that for the purpose of securing the ends of justice, quashing of FIR becomes necessary and Section 320 of the Code would not be a ban to the exercise of power of quashing. It is further observed that in matrimonial matters, it is the duty of the Court to encourage genuine settlements of matrimonial disputes.*

12. Applying the principle laid down by the Supreme Court

in above referred to judgement to the facts of the present case, special feature in this case is that respondent nos. 1 and 2 have settled the matter by putting an end to their matrimonial life, therefore, it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. In aforesaid view of the matter since the parties have settled the matter, no useful purpose would be served by entertaining this Criminal Revision Application filed at the instance of the State of Gujarat and that too against the order of acquittal.

14. Seen in the above context, petition lacks merit and deserves to be rejected at the admission stage.

15. For the foregoing reasons, petition fails and accordingly it is rejected at the threshold. Rule is discharged.

16. Certified xerox copy of the petition being HMP No. 94 of 2004 and the order passed below the same by the presiding Judge as well as compromise purshis duly signed by both the parties, shall be retained on record of the case.

(A.M.Kapadia, J)

Jayanti*